
(2010) 07 AHC CK 0444
In the Allahabad High Court
Case No : Criminal Appeal No. 3 of 1982

Shamim Ahmad alias Munnoo and Others	APPELLANT
Vs	
State of U.P.	RESPONDENT

Date of Decision : 01-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 307, 324, 34

Citation : (2011) 1 ACR 483

Hon'ble Judges : S.C. Agarwal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.C. Agarwal, J.—This criminal appeal has been filed against judgment and order dated 23rd December, 1981 passed by the VI Ith Addl. Sessions Judge, Azamgarh in S. T. No. 236 of 1989, whereby the Appellants Shamim Ahmad was convicted u/s 307, I.P.C. and sentenced to undergo R.I. for four years. Appellants Shamshul Huda, Shamshul Haq and Saghir Ahmad were convicted u/s 307 read with Section 34, I.P.C. and were sentenced to undergo R.I. for 3 1/2 years.

2. Appellant No. 4 Saghir Ahmad had died as per the office report dated 11th April, 2007 and the report of the C.J.M., Azamgarh dated 23rd March, 2007. The appeal of Appellant Saghir Ahmad stands abated on account of his death.

3. The incident took place on 20.4.1979 at 6 a.m. The F.I.R. was lodged by Sri Razi Ahmad (P.W. 1) on the same day on 8.30 a.m. at P.S. Ghosi, district Azamgarh.

4. The prosecution case, as contained in the F.I.R. is that there was previous enmity between the parties and a criminal case was pending against the Appellants. On 20.4.1979 at 6 a.m., the accused Shamshul Haq, Shamim Ahmad alias Munnoo, Shamsul Huda and Saghir Ahmad came on the khalian of the complainant. Shamshul Haq was armed with a gun. He gave the gun to Appellant

Shamim Ahmad alias Munnoo. On the exhortation of other three co-accused," Shamim Ahmad alias Munnoo fired at the complainant Razi Ahmad causing him injuries.

5. On the basis of F.I.R. Ex. Ka-4, the case was registered at Crime No. 83 of 1979. The injured was sent for medical examination. After investigation, charge-sheet was submitted.

6. The charge u/s 307, I.P.C. against Shamim Ahmad alias Munnoo and charge u/s 307/34, I.P.C. was framed against rests of the Appellants. The Appellants denied the charge and claimed to be tried.

7. The prosecution examined as many as seven witnesses in the case. Razi Ahmad (P.W. 1) is the first informant and the injured. Mohd. Isa (P.W. 2), Shamim Ahmad (P.W. 3) and Mohd. Idris (P.W. 4) are the witnesses of fact. Dr. V. P. Singh (P.W. 5) had medically examined the injured on 20.4.1979 at 9.30 a.m. at Government Hospital, Ghosi, Azamgarh and prepared injury report Ex. Ka"-2. Dr. S. D. P. Gupta (P.W. 7) is the Radiologist and has prepared X-ray report Ex. Ka-8. Head Constable Krishna Singh (P.W. 6) is the formal witness, who has prepared chick report, copy of G.D. and proved the charge-sheet. The Investigating Officer was not examined.

8. In their statements u/s 313, Code of Criminal Procedure, the accused persons denied the prosecution allegations and claimed that they have been falsely implicated on account of enmity. However, the defence had not adduced any oral or documentary evidence.

9. Learned Sessions Judge relied upon the evidence adduced by the prosecution, convicted and sentenced the Appellants as stated above.

10. I have heard Sri D. N. Pandey, learned Counsel for the Appellant Nos. 1, 2 and 3, learned A.G.A. for the State and Sri Dharmendra Srivastava, learned Counsel for the complainant.

11. Learned Counsel for the Appellants has not assailed the findings of fact recorded by the Sessions Judge. His submission is that the injuries sustained by the victim were not on any vital part of the body and were not dangerous to life. There was no intention on the part of the Appellants to commit murder of the complainant and thus offence falls within the scope of Section 324, I.P.C. which is compoundable with the permission of the Court. It is further submitted that parties have come to terms and compromise was filed in Court, which was sent to C.J.M., Azamgarh for verification and has been duly verified. It is further submitted that to maintain harmonious relation between the parties in future, the compromise be accepted and Appellants be acquitted on the basis of compromise.

12. Learned A.G.A. and learned Counsel for the complainant have no objection to this course of action.

13. I have gone through the testimony of P.W. 1 Razi Ahmad and the eye-witnesses Mohd. Isa (P.W. 2), Shamim Ahmad (P.W. 3) and Mohd. Idris (P.W. 4) and it is established from their testimony that on the exhortation of other three accused, accused Shamim Ahmad alias Munnoo fired at the complainant causing injuries. Dr. V. P. Singh (P.W. 5), who has examined the injured soon after the incident, found the following injuries on his person:

(1) One small circular lacerated wound $1\frac{1}{10}$ " x $1\frac{1}{10}$ " x $1\frac{1}{10}$ " located on left anterior aspect of the middle $\frac{1}{3}$ rd margin of the left thigh. $7\frac{1}{2}$ " above the knee Joint (Advised X-ray). No scorching, tattooing and blackening present.

(2) One small circular lacerated wound $1\frac{1}{10}$ " x $1\frac{1}{10}$ " x $1\frac{1}{10}$ " located on the inner side of the left shoulder joint (Advised X-ray). No scorching, tattooing and blackening present.

14. The injuries were caused by fire-arm. Duration was fresh. Injury report is Ex. Ka-3. After X-ray, injuries were found to be simple.

A perusal of the injury report reveals that Razi Ahmad sustained two pellet injuries, one on left thigh and the other on left shoulder. The fire was made from a distance. In these circumstances, intention to kill on the part of the Appellants cannot be inferred. I find sufficient force in the submission of learned Counsel for the Appellant that the case is squarely covered u/s 324, I.P.C. and not u/s 307, I.P.C.

15. The compromise petition was filed in this Court on 2nd March, 2007. It was mentioned in the compromise petition that injuries sustained by Razi Ahmad were simple and were not dangerous to life. The parties belong to the same village and the same family. The relation between the complainant side and defence side have improved and," therefore, the parties be permitted to compound the case.

16. The compromise was sent to C.J.M., Azamgarh for verification. Verification report has already been received.

17. Before this Court, learned Counsel for both the parties have come to terms and the compromise has been verified. I have already held that offence u/s 307, I.P.C. is not made out but the case is covered u/s 324, I.P.C, which is compoundable. The parties were inimical earlier but now the relations between the parties have improved and they wish to live in peace and harmony in future. With a view that the relations between the parties remain cordial in future, it is desirable that compromise be accepted and Appellants be acquitted on the basis of compromise. The appeal is, thus liable to be allowed.

18. The criminal appeal is allowed. Conviction and sentence awarded by the Sessions Judge to the Appellants under Sections 307 and 307/34, I.P.C. is set aside. Parties are permitted to compound the case u/s 324, I.P.C. The compromise filed by the parties is accepted. The Appellants are acquitted u/s 324, I.P.C. on the basis of compromise. The Appellants are on bail. They need

not surrender. Their bail bonds are cancelled.

19. Appeal in respect of Appellant Saghir Ahmad stands abated on account of his death.

20. Let the copy of this judgment alongwith the trial court's record be sent to the Court concerned within a week.